

J. N. WHITTAKER.

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JUNE 8, 1910.—Ordered to be printed.

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Mr. TILSON, from the Committee on Claims, submitted the following

### ADVERSE REPORT.

[To accompany H. R. 5768 and 17471.]

The Committee on Claims, to whom was referred the bills (H. R. 5768 and 17471) for the relief of J. N. Whittaker, having considered the same, report thereon with a recommendation that it do not pass.

Appended hereto are letters from the Department of Justice and the War Department, which are made a part of this report.

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DEPARTMENT OF JUSTICE,  
*Washington, February 17, 1909.*

SIR: Referring to department letter dated January 29, 1909, relative to H. R. 20862, entitled "A bill for the relief of J. N. Whittaker," the department regrets that by inadvertence said letter did not discuss the merits of the claim covered by said bill, but discussed another claim presented by Mr. Whittaker, about which several letters had recently been written to him. The claim covered by H. R. 20862 was also covered by Senate bill No. 6707, and this last-mentioned bill was transmitted to this department by the chairman of the Committee on the Judiciary, United States Senate.

In a letter of this date to the said chairman, the Attorney-General said:

"The claim is for services rendered under the following circumstances:

"The War Department had made arrangements whereby it acquired certain property by donation. Under the law, when any real property is to be purchased, the seller is required to furnish the necessary abstracts, which are to be examined by the proper United States attorney. As the real estate above mentioned was donated, the department could not ask the grantors to go to the expense of procuring the necessary abstracts. Upon these facts being brought to the attention of the Attorney-General, the United States attorney for the eastern district of Virginia was instructed to cooperate with Capt. E. E. Winslow, of the Corps of Engineers, U. S. Army, and to render him necessary assistance in acquiring title to the lands in question. In a letter to this department dated July 28, 1906, the said United States attorney says:

"At the time of the receipt of this letter the then assistant United States attorney could not do the work. I was very much engaged on urgent official business, particularly in the chancery court of this city in connection with the cruiser *Galveston* and other vessels in which the Government had an interest, in the litigation in that court with the William R. Trigg Company, the builders. At my request Mr. Whittaker, an experienced title examiner, who had formerly been connected with this office, kindly agreed to make the necessary examination of titles, and from time to time he submitted abstracts of title, prepared by him in the matter, to me for my approval. Mr. Whittaker devoted a great deal of time to this work, and I herewith transmit carbon copy of a letter addressed to me by him on the completion of the work in June last, which sets out in detail the amount of work done by him in securing satisfactory titles.

"When the examination was completed, and the last transfer of title made to the United States, it was suggested to Mr. Whittaker by the engineer officer in Norfolk, Va., as he informed me, that he render a bill for his services in this matter, after first procuring my approval, which he did, accordingly, and which is the bill in question.

"I beg leave to say, further, that I did not assume to employ Mr. Whittaker under authority from the Department of Justice, or from any other source, for I had no such authority, and that I consider the amount charged (\$1,000) to be a reasonable compensation for the services rendered."

"In view of the foregoing, it is believed that the said bill for the relief of Mr. Whittaker should have been referred to the Secretary of War rather than to the Attorney-General, as the work appears to have been done for that department rather than for the Department of Justice.

"It is understood that Mr. Whittaker rendered the services mentioned when he was a clerk to the United States district judge for the eastern district of Virginia, but it is not contended that he rendered the services as such clerk, or that it was his duty to do so."

Will you kindly substitute this letter for the letter dated January 29, 1909?

Respectfully,

CHARLES J. BONAPARTE,  
*Attorney-General.*

Hon. J. M. MILLER,  
*Chairman Committee on Claims,  
House of Representatives.*

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WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
*Washington, February 10, 1909.*

SIR: Receipt is acknowledged by reference of a copy of H. R. 20862 with the request of the chairman of the committee of the House of Representatives for all the facts and information concerning the matter, which is a bill for the relief of J. N. Whittaker, and an opinion touching the merits of the claim.

It is believed that the facts in the possession of this office may best be presented by copies of correspondence in connection with the claim when presented to the department for payment in 1906.

From this correspondence it appears that in compliance with the request of Maj. E. Eveleth Winslow, Corps of Engineers, for such legal assistance as he required and was entitled to under section 361 Revised Statutes, such request having been made through the War Department and the Department of Justice in the usual manner. Mr. Whittaker, at the request of Hon. L. L. Lewis, United States attorney for the eastern district of Virginia, "kindly agreed to make the necessary examinations of titles."

The Comptroller of the Treasury, in his decision of September 27, 1906, refers to this engagement of the services of Mr. Whittaker as employed by Mr. Lewis. As to whether he was authorized to employ Mr. Whittaker when he and his assistant were too busy with other matters to give the required assistance, no opinion is expressed. Attention is invited to the fact that the Acting Attorney-General, on August 1, 1906, stated that the bill was not payable from any appropriation under control of the Department of Justice, and the comptroller has decided that this department is not authorized to pay this claim.

In the opinion of this office, the services were necessary, the result thereof was satisfactory, they were accepted and availed of by the United States, and the bill is reasonable for the services rendered.

Very respectfully,

W. L. MARSHALL,  
*Chief of Engineers, U. S. Army.*

THE SECRETARY OF WAR.

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ENGINEER OFFICE, U. S. ARMY,  
ROOM 2, CUSTOM-HOUSE,  
*Norfolk, Va., June 28, 1906.*

GENERAL: 1. I have the honor to forward herewith a letter from Mr. J. N. Whittaker, together with the bill therein referred to, reciting in detail the services rendered by him in connection with the acquirement by the United States of certain land needed for the diversion of the Appomattox River, Virginia, at Petersburg.

2. Mr. Whittaker has worked with great zeal, and has at all times done all in his power to promote a speedy consummation of the questions connected with the transfer of the land desired. The land purchased was acquired from several individuals and two railroad companies. In preparing the abstract of title for the parcels owned by the latter much time and expense for traveling was necessary in the searching of the records to determine what incumbrances covered the property to be conveyed to the United States.

As evidence that the work was well performed by Mr. Whittaker, I would mention the fact that all the abstracts of title to the property purchased, and the forms of deeds for its conveyance, all passed the scrutiny of the Attorney-General without exception being made thereto.

3. Authority is respectfully requested to pay the amount of the bill (\$1,000) as a charge against the appropriation for "Improving Appomattox River, Virginia, at Petersburg."

Very respectfully, your obedient servant,

E. EVELETH WINSLOW,  
Major, Corps of Engineers, U. S. Army.

Brig. Gen. A. MACKENZIE,  
Chief of Engineers, U. S. A., Washington, D. C.  
(Through Lieut. Col. DAN C. KINGMAN,  
Corps of Engineers, U. S. Army,  
Division Engineer Southeast Division.)

[First indorsement.]

OFFICE OF DIVISION ENGINEER,  
SOUTHEAST DIVISION,  
Savannah, Ga., July 2, 1906.

1. Respectfully submitted to the Chief of Engineers, U. S. Army.
2. The service performed by Mr. Whittaker would appear to have been very necessary and to have been valuable. The amount charged for the service does not appear to be excessive, and it is respectfully recommended that payment be made.
3. I do not know whether the services of Mr. Whittaker were engaged by the Engineer Department or by the Department of Justice, and am unable to offer any opinion as to whether the payment should be charged to the appropriation for the work or not. The service rendered to the work was evidently worth the amount charged.

DAN C. KINGMAN,  
Lieut. Col., Corps of Engineers,  
Division Engineer, Southeast Division.

[Second indorsement.]

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
Washington, July 14, 1906.

1. Respectfully submitted to the Department of Justice, with request for opinion as to whether the accompanying bill is properly payable from funds under the control of that department.
  2. If not, the matter will be presented to the Comptroller of the Treasury, with a view to paying the account, if practicable, from the appropriation made for the diversion of the Appomattox River.
  3. An expression of opinion as to the reasonableness of the bill is also requested.
- By authority of the Secretary of War.

A. MACKENZIE,  
Brig. Gen., Chief of Engineers, U. S. Army.

[Third indorsement.]

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
Washington, August 8, 1906.

1. Respectfully returned to Major Winslow, inviting attention to preceding indorsements and letter from Acting Attorney-General.
2. There is nothing in the within letter to show in what way or by whom Mr. Whittaker's services were engaged.
3. The account should be put in voucher form for submission to the comptroller in such a manner as to show clearly whether the service rendered was solely in preparing

abstracts of title to and conveyance of land to be purchased, or that of attorney or counsel within the meaning of section 189, Revised Statutes, which provided that "no head of a department shall employ attorney or counsel."

By command of Brigadier-General Mackenzie:

W. J. BARDEN,  
*Captain, Corps of Engineers.*

[Fourth indorsement.]

ENGINEER OFFICE, U. S. ARMY,  
*Norfolk, Va., August 14, 1906.*

1. Respectfully returned to the Chief of Engineers, U. S. Army, with voucher, in duplicate, to cover the within-mentioned amount.

2. The services of Mr. Whittaker in examining the titles to the various parcels of land purchased for the improvement of the Appomattox River, Virginia., were engaged by the United States attorney for the eastern district of Virginia, who had been instructed by the Department of Justice to assist this office in procuring titles to the land needed.

3. The service rendered by Mr. Whittaker was solely in searching the titles and preparing abstracts.

4. Payment to Mr. Whittaker for similar services was authorized by the department on September 21, 1904, 47467/29.

E. EVELETH WINSLOW,  
*Major, Corps of Engineers, U. S. Army.*

[Fifth indorsement.]

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
*Washington, August 21, 1906.*

Respectfully submitted to the Comptroller of the Treasury for his action.

By authority of the Secretary of War:

FREDERIC V. ABBOT,  
*Acting Chief of Engineers.*

RICHMOND, VA., *June 27, 1906.*

DEAR JUDGE: I beg to inclose herewith my bill for services in connection with the examination of titles to lands taken by the Government in the city of Petersburg and county of Chesterfield for the purposes of diverting the Appomattox River at those points. I deem it proper to go into detail, so that you may be properly advised as to my work in this matter.

As to the Atlantic Coast Line Railway Company title:

The lands taken from this company by the Government were obtained by the Atlantic Coast Line Railway Company under seven different titles, all of which took considerable time to examine and prepare abstracts of—the company in some instances not knowing how they acquired title nor from whom. I found it exceedingly difficult to make these examinations, because the company and its predecessors had recorded their deeds sometimes in Petersburg, sometimes in Chesterfield, and sometimes in Richmond, but not all in one place. I found deeds of trust given by the predecessor railroad company of the Atlantic Coast Line Railway as far back as 1853; the first to secure \$175,000; the second executed in 1854, to secure \$150,000; the third in 1865, to secure \$175,000; the fourth in 1870, to secure \$175,000; the fifth in 1875, to secure \$400,000; the sixth in 1861, being practically a deed to replace the one above mentioned as "fifth," but at a lower rate of interest.

As to the first four of said deeds of trust, they were existing liens at the time of my examination, and I believe their existence had been overlooked by the company, as its counsel told me he had never heard of them before. The trustees in said deeds being all dead, it became necessary to institute chancery suits in the chancery court of the city of Richmond, in the first of which the deeds of trust first, second, and third above mentioned were released, and in the second suit the deed fourth above mentioned was also ordered released of record.

As to the deed fifth above mentioned, both trustees being dead, new trustees were appointed, who joined in the deed to the city of Petersburg to release that lien. That release also covered the deed sixth above mentioned. Then came another deed of trust executed April 1, 1890, to the Central Trust Company, of New York, to secure \$1,000,000; then a deed of trust executed June 16, 1902, to the United States Trust Company, of New York, to secure \$80,000,000. After considerable negotiation these two trust companies executed a deed of release of the lands to be obtained by the

United States from said two deeds of trust last mentioned, so that legal title could be vested in the United States and its predecessors in title.

It was also necessary to examine the various acts of assembly of Virginia incorporating the Richmond and Petersburg Railroad Company, to authorize said company to consolidate with the Petersburg Railroad Company, to allow the consolidated company to change its name to the Atlantic Coast Line Railroad Company of Virginia, and then to allow last-named company to change its name to the Atlantic Coast Line Railroad Company and issue bonds, etc. Then it was necessary to examine into the acts of the general assembly of Virginia authorizing the diversion of the Appomattox River, the exercise of the right of eminent domain by the city of Petersburg to acquire all necessary lands, etc., the procuring of proper ordinances of the city council of the city of Petersburg respecting the work, the execution of deeds, etc., the preparation of deeds, etc., necessary to pass title from the Atlantic Coast Line Railroad Company to the city of Petersburg and from the latter to the United States.

As to Norfolk and Western Railway Company title:

It not being possible to get good title to the lands wanted on account of numerous liens recorded, it was necessary to condemn the same, which was done by regular condemnation proceedings.

The charters of the various railroad companies finally composing the Norfolk and Western Railroad Company and various acts of the Virginia general assembly relating to said companies, were all carefully examined, to show title in the Norfolk and Western Railroad Company, the supervision of said condemnation proceedings, and finally the preparation of the deed from the city of Petersburg to the United States conveying the land condemned.

The foregoing work has been in progress for the past two years and has taken a considerable portion of that time to make the examinations necessary in connection therewith. Trips almost without number have been made by me to Chesterfield Court House and Petersburg; also to Norfolk and Alexandria to investigate records in the United States courts relating to these titles. The abstract of title relating to these two railroad companies alone cover 97 pages of typewritten matter.

In view of the amount of labor and time, covering twenty-four months, I have expended in this matter, I respectfully ask your indorsement of my bill as rendered, and suggest that you attach this letter thereto and forward same with your recommendation to Maj. E. E. Winslow, U. S. Engineers, Norfolk, Va.

Yours, respectfully,

J. N. WHITTAKER.

Hon. L. L. LEWIS,  
*United States Attorney, Richmond, Va.*

RICHMOND, VA., June 27, 1906.

The United States of America (War Department) to J. N. Whittaker:

1904 to 1906: To services from June, 1904, to June, 1906, examining and perfecting titles of Atlantic Coast Line Railroad and Norfolk and Western Railway, to lands in the city of Petersburg and county of Chesterfield, Va., to be used in connection with the diversion of Appomattox River at those places, \$1,000.

Approved:

L. L. LEWIS, *United States Attorney.*

JUNE 27, 1906.

DEPARTMENT OF JUSTICE,  
*Washington, August 1, 1906.*

SIR: The inclosed papers, in regard to the bill of J. N. Whittaker, amounting to \$1,000, for services rendered in connection with the examination of the title to lands purchased by the Government for use in the diversion of the Appomattox River were received, by reference from the Chief of Engineers, United States Army, under date of the 14th ultimo.

In reply to the inquiries contained in the "second indorsement," you are advised that the said bill is not payable from any appropriation under the control of this department.

This department has no information as to the reasonableness of the bill, but the United States attorney for the eastern district of Virginia, to whom the matter was referred, states that, in his opinion, the amount charged is a "reasonable compensation for the services rendered."

Respectfully,

CHARLES W. RUSSELL,  
*Acting Attorney-General.*

The SECRETARY OF WAR.



*Appropriation for improving Appomattox River, Virginia, at Petersburg.*

The United States to J. N. Whittaker, Richmond, Va., Dr.:

June 27, 1906: For services rendered examining titles of Atlantic Coast Line Railroad and Norfolk and Western Railway to lands in the city of Petersburg and county of Chesterfield, Va., and furnishing abstracts of same. Application, procurement of land for diverting river, \$1,000.

I certify that the above account is correct and just; that the services were rendered as stated and were necessary for the benefit of the public service.

E. EVELETH WINSLOW,  
*Major, Corps of Engineers.*

Received at Norfolk, Va., this — day of —, 1906, from Maj. E. Eveleth Winslow, Corps of Engineers, the sum of \$1,000 in full payment of the above account, which I certify to be correct.

TREASURY DEPARTMENT,  
*Washington, August 23, 1906.*

SIR: For use in rendering a decision as to your authority to pay J. N. Whittaker \$1,000, the amount of his claim for services in examining and perfecting titles of Atlantic Coast Line Railroad and Norfolk and Western Railway to lands in the city of Petersburg and county of Chesterfield, Va., and furnishing abstracts of same, please furnish this office the following information:

First. By whose authority was Mr. Whittaker employed?

Second. Please furnish a copy of his employment, and if there was no writing stating the terms and conditions of his employment and defining his duties, a written statement of them should be furnished by L. L. Lewis, United States attorney, by whom it is stated he was employed, and also by what authority he claimed to act.

Third. When was your department first advised of the employment of Mr. Whittaker?

Fourth. Were the condemnation proceedings and suits in chancery, spoken of as necessary to perfect the titles by Mr. Whittaker in his letter addressed to Hon. L. L. Lewis, United States attorney, dated June 27, 1906, conducted by Mr. Whittaker as attorney for the United States?

Fifth. If not, by whom, for whom, and in whose name were they prosecuted?

Respectfully,

L. P. MITCHELL, *Acting Comptroller.*

The SECRETARY OF WAR.

[Second indorsement.]

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
*Washington, August 30, 1906.*

Respectfully referred to Maj. E. Eveleth Winslow, Corps of Engineers, for compliance with the within request of the Acting Comptroller of the Treasury.

By order of the Acting Chief of Engineers:

CHARLES W. KUTZ,  
*Captain, Corps of Engineers.*

[Third indorsement.]

ENGINEER OFFICE, UNITED STATES ARMY,  
*Norfolk, Va., September 7, 1906.*

Respectfully returned to the Chief of Engineers, U. S. Army, inclosing a letter, and its inclosure, from Mr. J. N. Whittaker, which, it is believed, gives the information desired by the comptroller.

E. EVELETH WINSLOW,  
*Major, Corps of Engineers, U. S. Army.*

[Fourth indorsement.]

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
*Washington, September 13, 1906.*

Respectfully submitted to the Comptroller of the Treasury, inviting attention to the preceding indorsement and to the accompanying papers.

By authority of the Secretary of War.

A. MACKENZIE,  
*Brig. Gen., Chief of Engineers, U. S. Army.*

OFFICE UNITED STATES DISTRICT JUDGE,  
EASTERN DISTRICT OF VIRGINIA,  
*Richmond, Va., September 3, 1906.*

DEAR MAJOR: Your letter of September 1 received, and I hasten to reply. I will answer the questions of the comptroller in the order asked.

First. By whose authority was Mr. Whittaker employed?

On the 24th of July, the Attorney-General wrote Judge Lewis, United States attorney, on the same matter, and asking this same question. Attached hereto is a carbon copy of Judge Lewis's reply to the Attorney-General, which fully answers this question. You will notice that Judge Lewis states that he was instructed by the Department of Justice to render to you necessary assistance in acquiring title to the lands in question; that on account of other pressing official duties, he asked me to see you and act under your instructions; which I did, and have been in correspondence and conference with your office during the entire period of time.

The above answer also answers queries two and three of the comptroller.

Fourth. Were the condemnation proceedings and suits in chancery spoken of, as necessary to perfect the titles, by Mr. Whittaker in his letter addressed to Hon. L. L. Lewis, United States attorney, dated June 27, 1906, conducted by Mr. Whittaker as attorney for the United States?

In answer to this, I beg to say that upon my examination of the title of the Atlantic Coast Line Railway Company, I found that as to some portions of the land, the legal title had been outstanding for upward of fifty years; that notwithstanding this, new mortgages had been made from time to time during this period, and that when it was found necessary to make the deed to the United States, this legal title being so outstanding, chiefly in trustees who had been dead for many years, I required that the railroad company take the necessary steps to have the old trustees replaced by new trustees. To do this the chancery suits referred to in my letter were brought by the attorney for the Atlantic Coast Line Railroad, as the benefit accrued to the railroad, and I had to watch the proceedings all through, to see that eventually the outstanding legal title was so merged in the present trustees, that they could convey same to the United States. In these suits, I represented the interests of the United States entirely. I did not bring the suits, but had them brought by the railroad company, in order to perfect their title, and clear the clouds from their title. Until these matters were brought to the attention of the railroad company by me, they were unknown, I believe, by the company or its counsel. Until the clouds were removed, the present trustees, and the railroad company itself, could not convey the land to the Government needed for the diversion of the Appomattox River.

As to the condemnation proceedings to acquire land from the Norfolk and Western Railway Company, when I examined the title of the company, I found several blanket mortgages covering the entire line of railway of the company; and counsel for the railroad company having advised me that under the provisions of their mortgage deeds there was no way of getting the trustees to join in a conveyance to the Government, and condemnation proceedings would have to be instituted, the counsel for the Norfolk and Western Railway and counsel for the city of Petersburg (it being deemed best to condemn the land in the name of the city of Petersburg, rather than in the name of the United States) brought such proceedings, after the papers had been submitted to me for approval on behalf of the United States; and I watched the proceedings in court, and saw that all proper and necessary action was taken to condemn said land, and finally had the decree recorded placing title in the city of Petersburg, and later the deed from the city of Petersburg to the United States.

In both these railroad transactions I represented only the United States, to see that their interests were protected, and that they got good and legal title to the lands acquired.

I think the above answers also query 5 of the comptroller.

Very respectfully,

J. N. WHITTAKER.

Maj. E. E. WINSLOW, U. S. Army,  
*Engineer Office, Norfolk, Va.*

OFFICE OF UNITED STATES ATTORNEY,  
EASTERN DISTRICT OF VIRGINIA,  
*Richmond, Va., July 28, 1906.*

SIR: I have to acknowledge receipt of your letter of the 24th instant (J. J. G., 28968) relative to the bill of J. N. Whittaker for services rendered from June, 1904, to June,

1906, in examining titles to lands purchased by the Government for the purpose of diverting the Appomattox River, and in reply thereto I have to say that by department letter, dated March 7, 1904 (A. J. B., R. T. S., F. 28,968), I was instructed to cooperate with Capt. E. E. Winslow, Corps of Engineers, U. S. Army, and to render him necessary assistance in acquiring title to the lands in question; that at the time of the receipt of this letter the then assistant United States attorney could not do the work; that I was very much engaged on urgent official business, particularly in the chancery court of this city in connection with the cruiser *Galveston*, and other vessels in which the Government had an interest, in the litigation in that court with the William R. Trigg Company, the builders; that at my request Mr. Whittaker, an experienced title examiner, who had formerly been connected with this office, kindly agreed to make the necessary examination of titles, and that from time to time he submitted abstracts of title, prepared by him in the matter, to me for my approval; that Mr. Whittaker devoted a great deal of time to this work, and I herewith transmit carbon copy of a letter addressed to me by him on the completion of the work in June last, which sets out in detail the amount of work done by him in securing satisfactory titles.

When the examination was completed and the last transfer of title made to the United States, it was suggested to Mr. Whittaker by the engineer office in Norfolk Va., as he informed me, that he render a bill for his services in this matter, after first procuring my approval, which he did accordingly, and which is in the bill in question.

I beg leave to say further that I did not assume to employ Mr. Whittaker under authority from the Department of Justice or from any other source, for I had no such authority; and that I consider the amount charged (\$1,000) to be a reasonable compensation for the services rendered.

Very respectfully,

L. L. LEWIS, *United States Attorney.*

The ATTORNEY-GENERAL,  
Washington, D. C.

TREASURY DEPARTMENT,  
Washington, September 27, 1906.

SIR: By your authority of August 21, 1906, I have received from the Chief of Engineers a request for a decision of the question whether you are authorized to pay from the appropriation "Improving the Appomattox River, Virginia," the claim of J. N. Whittaker of \$1,000 "for services rendered in examining titles of Atlantic Coast Line Railroad and Norfolk and Western Railroad to lands in the city of Petersburg and county of Chesterfield, Va., and furnishing abstracts of same."

It seems that the War Department had in contemplation the improvement of the Appomattox River and it was deemed necessary to procure titles to certain lands owned by the companies above mentioned, and upon application to the Department of Justice the United States district attorney for the western district of Virginia was instructed to render assistance and to cooperate with Capt. E. E. Winslow, Corps of Engineers, in acquiring title to the lands in question.

Acting upon that instruction from the Department of Justice, L. L. Lewis, United States district attorney, being busily engaged upon other matters, and the assistant United States attorney also being busily engaged, employed Mr. Whittaker to do the work without any specific arrangement or agreement as to compensation.

The work appears to have been done, and there seems to be no question that it was worth the \$1,000 charged by Mr. Whittaker.

The facts in the case show that the district attorney was not authorized to engage the services of Mr. Whittaker, either by the Department of Justice or the War Department, and under the circumstances it is not seen how his act binds the United States to pay for the services. The services in question, so far as the United States is concerned, were purely voluntary, and therefore no implied contract to pay for them arose by reason of their performance, and unless it can be held that the engineer officer in charge of the work by accepting the results of Mr. Whittaker's labor thereby bound the Government to pay for it, you would not be authorized to pay the claim.

The claim in question is for services, and the United States has no option as to acceptance, and because of that fact no obligation could be implied by the acceptance to pay for said services.

Therefore, under the facts as stated in this case, you are not authorized to pay the claim presented. (7 Comp. Dec., 729; 8 id., 157; 32 MS. Comp. Dec., 605.)

The view above expressed renders the question as to what appropriation is applicable in making the payment immaterial.

Respectfully,

L. P. MITCHELL,  
*Assistant Comptroller.*

The SECRETARY OF WAR.



[First indorsement.]

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
*Washington, October 2, 1906.*

Respectfully referred to Maj. E. Eveleth Winslow, Corps of Engineers, for his information.

By command of Brigadier-General Mackenzie.

W. J. BARDEN,  
*Captain, Corps of Engineers.*

[Second indorsement.]

ENGINEER OFFICE, U. S. ARMY,  
*Norfolk, Va., October 8, 1906.*

Respectfully returned to the Chief of Engineers, U. S. Army, the necessary record having been made.

E. EVELETH WINSLOW,  
*Major, Corps of Engineers, U. S. Army.*

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